REMARKS

Reconsideration and allowance of the above-identified application are respectfully requested. Upon entry of this amendment, claims 1-33 are currently pending. Claims 1, 11, 14 and 15 have been amended. Claims 21-33 are new.

Claims 1, 2-4, 9, 11-15 and 18-20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hou et al. (U.S. Patent Number 6,901,051) (hereinafter "Hou") and further in view of Dacosta et al. (U.S. Publication Number 2004/0192322 A1) (hereinafter "Dacosta"). Prior to discussing this ground of rejection in detail, a brief summary of systems and methods for providing data rate indications according to exemplary embodiments of the present invention is provided below to highlight some of the advantageous characteristics thereof.

Initially, it should be noted that one objective of exemplary embodiments is to provide users of communications equipment with an indication of the level of network performance that they are likely to experience at their equipment. As explained in the Background section, signal strength indicators can be used for this purpose. However, signal strength alone is not necessarily a good indicator of expected network performance because it fails to take into account factors such as network loading conditions.

The various exemplary embodiments described in the present application address this problem by providing a mechanism in which the network is capable of deriving a better estimate of data throughput that will be experienced by a user device by using not only a parameter supplied by that device but also network service measurement data. In Applicant's amended claim 1 combination, this feature is recited as "a server in communication with the service measurement database, wherein the server estimates a data throughput for a device that is in communication with the network based on the network service measurement data and a parameter received from, and measured by, the device that is in communication with the network."

With respect to this feature, and as correctly stated in the Official Action, "Hou fails to explicitly teach the server estimates the data throughput for a device using a

parameter received from the device that is in communication with the network." Thus, the Official Action uses sections of Dacosta which teaches a system, apparatus and method for dynamically allocating wireless channels in a wireless network to attempt to remedy this deficiency of Hou. More specifically, as stated in the Official Action:

> "According to Dacosta, feedback may be measured from clients to indicate the bit error rate and signal-to-noise ratio (SNR) from previous data packets; and because the server knows the transmit power of the previous packet, the server can determine the relationship between the clients SNR and transmit power for the current propagation path of data packets between the server and client (see p. 5 [0048] [i.e. the feedback measured by the server from clients to indicate the clients **signal-to-noise ration (SNR)** reads on a parameter received from the device that is in communication with the network])."

In paragraph [0047] of Dacosta, a probing method is described wherein data packets may be sent to each of the clients from the server. It is respectfully submitted that the feedback of Dacosta described above appears be a method wherein the server measures transmissions from the clients to determine a SNR parameter. Thus, this feedback cannot be considered to be a parameter "received from, and measured by, the device" which can only be found, among other things, in Applicant's amended claim 1 combination.

In Applicant's amended claim 11 combination, this feature is recited as "receiving a first parameter from a communications device, and measured by said communication device, that is in communication with a computing device; receiving a second parameter from a service measurement database; calculating the relative network throughput based on the first and second parameters." In Applicant's claim 20 combination, this is defined as "means for receiving a first parameter from a communications device that is in communication with a computing device; means for receiving a second parameter from a service measurement database; means for calculating a network throughput based on the first and second parameters." It is respectfully submitted that the same

flaw in Dacosta with respect to Applicant's amended claim 1 is present with respect to Applicant's claims 11 and 20.

Additionally, it is respectfully submitted that, as opposed to what is set forth in the Official Action, col. 5, lines 38-43 of Hou do not read on "and communicating the relative network throughput to the communications device." The section cited in Hou (col. 5, lines 38-43) states:

> "In alternative embodiments, the performance metrics generated are provided to a user, such as a system administrator, or an automated system's management software for further analysis and examination to assist in managing the network or improving the quality of service (QoS) monitoring."

The above statement in Hou, does not indicate that the calculated throughput is communicated back to the communications device, i.e., the same device which sent the first parameter. Accordingly, strictly arguendo, even if one of ordinary skill in the art would have been motivated to combine Hou and Dacosta, the result would not be Applicant's claims 11 or 20.

Similar comments apply to dependent claims 2, 3, 4, 9, 12-15 and 18-19.

Accordingly, reconsideration and withdrawal of claims 1, 2-4, 9, 11-15 and 18-20 under 35 U.S.C. § 103(a) over Hou et al. (U.S. Patent Number 6,901,051) and further in view of Dacosta et al. (U.S. Publication Number 2004/0192322 A1) are respectfully requested.

The dependent claims are also allowable for reasons of their own. For example, with respect to Applicant's original claim 14 combination which includes, among other things, "wherein receiving a first parameter includes receiving one of a primary serving site", it is respectfully submitted that this is not described in the cited sections of Hou and Dacosta. To further clarify this issue, claims 14 and 15 have been amended and new claims 22-28 have been added which break down the elements of original claims 14 and 15.

Claims 5-8, 10 and 16-17 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hou et al. (U.S. Patent Number 6,901,051) and Dacosta et al. (U.S. Publication Number 2004/0192322 A1) as applied to claims 1, 11 and 20 above, and further in view of Well Known Prior Art - Official Notice. It is respectfully submitted that these dependent claims are allowable for at least the reasons described above with respect to the independent claims from which they depend. Accordingly, reconsideration and withdrawal of claims 5-8, 10 and 16-17 under 35 U.S.C. § 103(a) over Hou et al. (U.S. Patent Number 6,901,051) and Dacosta et al. (U.S. Publication Number 2004/0192322 A1) as applied to claims 1, 11 and 20 above, and further in view of Well Known Prior Art - Official Notice are respectfully requested.

Additionally, it is noted that the Official Action takes Official Notice that "it is well known in the art to use a modem to connect a client device to communicate with a network and for a modem to include a display area that is configured to display an indication of the throughput of the network." Even if it was known to use a modem to connect a client device to communicate with a network and for a modem to include a display area that is configured to display an indication of the throughput of the network, this does not mean that it would have been obvious for one of ordinary skill in the art to have modified the combination of Hou and Dacosta in the manner claimed. It is respectfully requested that, pursuant to MPEP Section 2144.03, the Examiner provide a reference to support this taking of Official Notice. Regardless of whether such features are, per se, known in the art, Applicant will need to review the as yet uncited document to determine whether or not one of ordinary skill in the art would have been motivated to make the combination alleged in the Official Action.
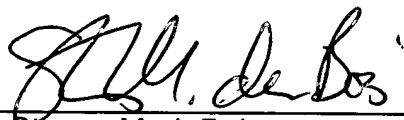
Claims 21-33 have been added to provide additional claim coverage for the present invention. More specifically, claim 21 describes a method of communicating a relative throughput to a user of a device, comprising the steps of: measuring at least one parameter associated with Received Signal Strength (RSS) local to an environment of a modem; using out of band signaling from the modem to a network to determine at least one other parameter associated with a primary serving site, a sector and a carrier associated with communications between the modem and the network; sending the at

least one parameter, the primary serving site, the sector, and the carrier, from the modem through the network to a server; querying, from the server, a service measurement database; obtaining, from the service measurement database, data relating to a performance of the network, wherein the data relating to the performance of the network contains information associated with at least one of voice traffic/sector/carrier, dropped calls and origination failures; estimating throughput of the network by the server based on the parameters and the data, wherein the throughput indicates relative throughput of the network to the modem; transmitting the estimated throughput to the modem via said network; and displaying the estimated throughput on the modem. Claim 22 describes wherein the at least one parameter is sent as at least one of SMS message or MMS message. Claims 23-29 have broken out the elements of original claims 14 and 15. Claims 30-33 describe additional aspects of the display area described in original claim 8. New claims 21-33 are allowable over the cited references for at least the reasons given above with regard to independent claims 1, 11, and 20.

All of the objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that this application is in condition for allowance and a notice to that effect is earnestly solicited. Should the Examiner have any questions regarding this response or the application in general, he is invited to contact the undersigned at (540) 361-1863.

Respectfully submitted,

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